

*Option C*

§ 61.202(a). Make no change except as to changing § 61.202 into § 61.202(a).

§ 61.202(b). Notwithstanding paragraph (a) to this subsection, the Administrator may grant prior approval of research and development of processes to remove radium from phosphogypsum. Such approval shall be granted upon the Administrator's finding that the owner or operator has demonstrated that the proposed process

is at least as protective of public health, in the short and long term, as is disposal into stacks or mines, and upon such other factors as the Administrator in his discretion deems appropriate.

*Option D*

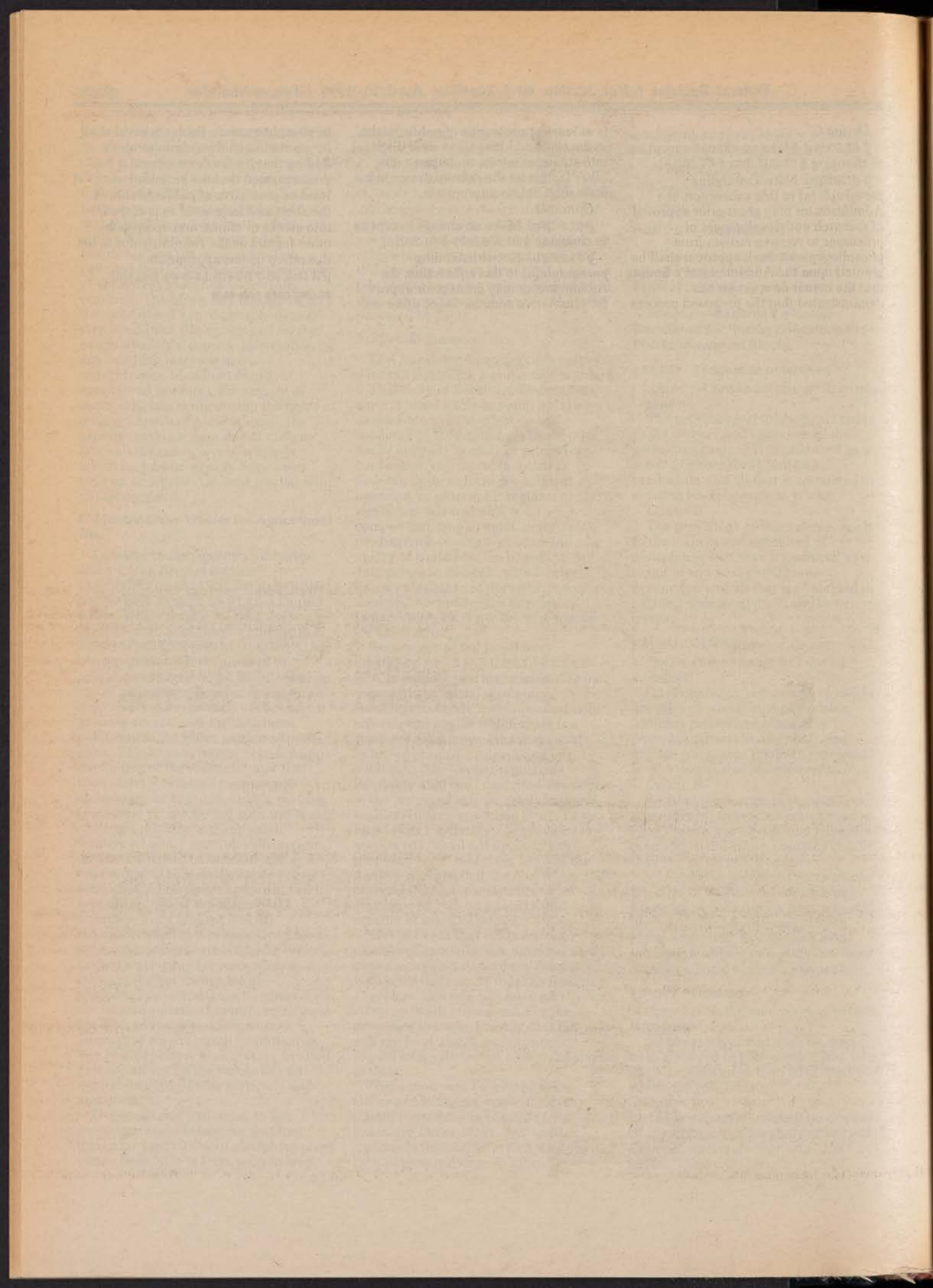
§ 61.202(a). Make no change except as to changing § 61.202 into § 61.202(a)

§ 61.202(b). Notwithstanding paragraph (a) to this subsection, the Administrator may grant prior approval for alternative commercial or other use

of phosphogypsum. Such approval shall be granted upon the Administrator's finding that the owner or operator has demonstrated that the proposed use is at least as protective of public health, in the short and long term, as is disposal into stacks or mines, and upon such other factors as the Administrator in his discretion deems appropriate.

[FR Doc. 90-7218 Filed 4-9-90; 8:45 am]

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# Federal Register

Tuesday  
April 10, 1990

## Part VIII

## Department of the Interior

### Fish and Wildlife Service

#### 50 CFR Part 17

#### Endangered and Threatened Wildlife and Plants; Steller Sea Lion and Palo de Rosa; Emergency Rule and Final Rule



## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

RIN 1018-AB41

## Endangered and Threatened Wildlife and Plants; Emergency Listing of the Steller Sea Lion

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Emergency rule.

**SUMMARY:** The Service adds the Steller (northern) sea lion (*Eumetopias jubatus*) to the List of Endangered and Threatened Wildlife for a period of 240 days. This measure is required by section 4(a)(2)(A) of the Endangered Species Act of 1973 in order to implement an emergency determination of threatened status by the National Marine Fisheries Service, which has jurisdiction for the Steller sea lion.

**DATES:** This emergency rule is effective on April 10, 1990, and expires on December 3, 1990.

**FOR FURTHER INFORMATION CONTACT:**

Dr. Ralph Morgenweck, Assistant Director, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service (AFWE-3024 MIB), Department of the Interior, Washington, DC 20240 (202/343-4646, FTS 343-4646).

**SUPPLEMENTARY INFORMATION:**

Responsibility for the Steller sea lion under the Endangered Species Act (16 U.S.C. 1531 *et seq.*) lies with the National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Department of Commerce. See Reorganization Plan No. 4 of 1970. Section 4(a)(2)(A) of the Act provides that NMFS must decide whether a species under its jurisdiction should be listed as endangered or threatened. The Fish and Wildlife Service (FWS) is responsible for the actual addition of a species to the List of Endangered and Threatened Wildlife in 50 CFR 17.11(h).

In the April 5, 1990, issue of the **Federal Register** (55 FR 12645), NMFS published its emergency determination of threatened status for the Steller sea lion. Accordingly, the FWS is required by section 4(a)(2)(A) of the Act to add the Steller sea lion as a threatened species to the List of Endangered and Threatened Wildlife for the 240-day period of the NMFS emergency rule. Because this FWS action is nondiscretionary, and, in view of NMFS's emergency finding under section 4(b)(7) of the Act, the FWS finds that good cause exists to omit the notice and public comment procedures of 5 U.S.C. 553(b).

The FWS also has determined that an Environmental Assessment or Environmental Impact Statement, as

defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in regard to regulations adopted under section 4(a) of the Act. A notice outlining the reasons for this determination was published in the **Federal Register** on October 25, 1985 (48 FR 49244).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

**Regulation Promulgation**

Accordingly, part 17, subchapter B of chapter 1, title 50 of the Code of Federal Regulations, is amended as set forth below:

**PART 17—[AMENDED]**

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1543; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.11(h) is amended from April 10, 1990, through December 3, 1990, by adding the following, in alphabetical order, to the List of Endangered and Threatened Wildlife under "MAMMALS:"

**§ 17.11 Endangered and threatened wildlife.**

\* \* \* \* \*  
(h) \* \* \*

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS: *							
Sea-lion, Steller (= northern).	<i>Eumetopias jubatus</i> .....	U.S.A. (AK, CA, OR, WA), Canada, Soviet Union; North Pacific Ocean.	Entire.....	T.....	384E.....	NA.....	227.12
*	*	*	*	*	*	*	

Dated: April 4, 1990.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90-8241 Filed 4-9-90; 8:45 am]

BILLING CODE 4310-55-M

## DEPARTMENT OF THE INTERIOR

## 50 CFR Part 17

RIN 1018-AB31

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for *Ottoschulzia rhodoxylon* (Palo de Rosa)

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Service determines *Ottoschulzia rhodoxylon* (palo de rosa) to be an endangered species pursuant to the Endangered Species Act (Act) of 1973, as amended. *Ottoschulzia rhodoxylon* is a plant that is endemic to Puerto Rico and Hispaniola. In Puerto Rico it is found in the limestone hills of the north coast, on limestone-derived soils of the south coast, and on the serpentine soils of the western mountains. Only nine individuals are known to exist in these three areas. The species is threatened by deforestation due to the expansion of residential and industrial areas and by its extremely low numbers. This final rule will extend

the Federal protection and recovery provisions afforded by the Act to *Ottoschulzia rhodoxylon*.

**EFFECTIVE DATE:** May 10, 1990.

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours at the Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622, and at the Service's Southeast Regional Office, Suite 1282, 75 Spring Street SW., Atlanta, Georgia 30303.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan Silander at the Caribbean Field Office address (809/851-7297) or Mr. David P. Flemming at the Atlanta



Regional Office address (404/331-3583 or FTS 841-3583).

#### SUPPLEMENTARY INFORMATION:

##### Background

*Ottoschulzia rhodoxylon* (palo de rosa) was first collected by Leopold Krug near Mayaguez, Puerto Rico, in 1876 and was described in 1908. This West Indian genus of only three species was dedicated to Otto Eugen Schulz, a German botanist (Liogier and Martorell 1982). Today the species is known from one locality in the limestone hill area on the north coast near Bayamón, and in several sites in the Guánica Commonwealth Forest, a dry limestone forest on the south coast. One individual has recently been reported from the Maricao Commonwealth Forest (G. Proctor, Puerto Rico Department of Natural Resources, personal communication). Urban, residential, and industrial expansion has greatly reduced forested area in all three of these localities. The information available indicates that the species is also rare in the Dominican Republic (Little et al. 1974, G. Proctor, personal communication).

*Ottoschulzia rhodoxylon* is a small, evergreen tree that has been reported to reach 12 to 15 feet (4 to 5 meters) in height. The leaves are alternate, glabrous, and elliptic to ovate. They are from 2 to 3½ inches (5 to 9 centimeters) long and 1¼ to 2½ inches (3 to 6 centimeters) wide, rounded or blunt at the apex and the base, entire, thick, and leathery. Flowers have not been observed, but fruits have recently been described as a one-seeded drupe with a thin pericarp (G. Proctor, personal communication). Flowers in this genus are bisexual, solitary or in clusters at the leaf bases, and composed of a tubular corolla with five lobes (Little et al. 1974). As indicated by both the common name and specific name, the heartwood is reddish and suitable for articles of turnery.

On the north coast *Ottoschulzia rhodoxylon* is found in semi-evergreen, seasonal forests at an elevation of approximately 325 feet (100 meters) in the limestone hills of Bayamón, to the west of the San Juan metropolitan area. On the south coast it occurs in low elevation, semi-deciduous dry forest on limestone. One individual is found along a dry stream bed, which carries water only during periodic torrential rains. All known south coast individuals occur within the Guánica Commonwealth Forest. In Maricao it is found on serpentine soils in lower montane, semi-evergreen forest at an elevation of approximately 1,960 feet (600 meters).

These serpentine outcrops and serpentinaceous soils contribute to a high floristic diversity and endemism.

Deforestation for agriculture, grazing, charcoal production, and urban and industrial development has had a significant effect on the native flora of Puerto Rico. Much of the remaining forest consists of secondary growth. Individual trees of *Ottoschulzia rhodoxylon* are known to have been lost to forest clearing. The extreme rarity of the species and the apparent irregularity of flower and fruit production make the species extremely vulnerable to the loss of any one individual.

*Ottoschulzia rhodoxylon* was recommended for Federal listing by the Smithsonian Institution (Ayensu and DeFilipps 1978). The species was included among the plants being considered as endangered or threatened species by the Service, as published in the Federal Register (45 FR 82480) dated December 15, 1980; the November 28, 1983, update (48 FR 53680) of the 1980 notice; and the September 27, 1985, revised notice (50 FR 39526). The species was designated category 1 (species for which the Service has substantial information supporting the appropriateness of proposing to list them as endangered or threatened) in each of the three notices.

In a notice published in the Federal Register on February 15, 1983 (48 FR 6752), the Service reported the earlier acceptance of the new taxa in the Smithsonian's 1978 book as under petition within the context of section 4(b)(3)(A) of the Act, as amended in 1982. The Service subsequently found in each October of 1983 through 1988 that listing *Ottoschulzia rhodoxylon* was warranted but precluded by other pending listing actions of a higher priority, and that additional data on vulnerability and threats were still being gathered. The Service proposed listing *Ottoschulzia rhodoxylon* on July 27, 1989 (54 FR 31216), which constituted the final finding required by the petition process.

##### Summary of Comments and Recommendations

In the July 27, 1989, proposed rule and associated notifications, all interested parties were requested to submit factual reports of information that might contribute to the development of a final rule. Appropriate agencies of the Commonwealth of Puerto Rico, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice inviting general public comment was published in the *El Día* on August 16, 1989, and in the *San Juan*

*Star* on August 13, 1989. Two letters of comment were received and are discussed below.

The U.S. Army Corps of Engineers, Jacksonville District, reported that they did not have ongoing studies or projects within the known habitat of *Ottoschulzia rhodoxylon*.

Dr. José Vivaldi, Chief of the Terrestrial Ecology Section of the Puerto Rico Department of Natural Resources, did not have additional information on the status of the species. All herbarium specimens examined were collected from the known localities. Due to the extreme rareness of the species, he supported listing as endangered.

##### Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1535 *et seq.*) and regulations (50 CFR part 242) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Ottoschulzia rhodoxylon* (palo de rosa) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Much of the island of Puerto Rico has been deforested, and today all of the known sites for *Ottoschulzia rhodoxylon* are found in areas of secondary forests. The north coast site lies just to the west of the San Juan metropolitan area, an area which is being rapidly developed. Undiscovered individuals in this area are likely to be destroyed before being discovered. Remaining individuals on the southwestern coast are found within the Guánica Commonwealth Forest, but they are found in sites such as dry stream beds and roadsides, which may be vulnerable to forest management practices that do not take the species into consideration.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Taking for these purposes has not been a documented factor in the decline of this species.

C. *Disease or predation.* Disease and predation have not been documented as factors in the decline of this species.

D. *The inadequacy of existing regulatory mechanisms.* The Commonwealth of Puerto Rico has adopted a regulation that recognizes and provides protection for certain Commonwealth listed species. However, *Ottoschulzia rhodoxylon* is not yet on



the Commonwealth list. Federal listing would provide immediate protection and, if the species is ultimately placed on the Commonwealth list, enhance its protection and possibilities for funding needed research.

E. *Other natural or manmade factors affecting its continued existence.* *Ottoschulzia rhodoxylon* is limited in its distribution. Only nine individuals are known to occur in Puerto Rico. The fruits of this species were only recently described and are rarely observed. Flowers have not yet been described. The location of some individuals along stream beds makes them vulnerable to natural disturbances such as flash-flooding. Because so few individuals are known to occur, the risk of extinction is extremely high.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Ottoschulzia rhodoxylon* as endangered. Only nine individuals in three areas are known to occur and no seedlings have been observed. Therefore, endangered rather than threatened status seems an accurate assessment of the species' condition. The reasons for not proposing critical habitat for this species are discussed below in the "Critical Habitat" section.

#### Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. The number of individuals of *Ottoschulzia rhodoxylon* is sufficiently small that vandalism could seriously affect the survival of the species. Publication of critical habitat descriptions and maps in the *Federal Register* would increase the likelihood of such activities. The Service believes that Federal involvement in the areas where this plant occurs can be identified without the designation of critical habitat. All involved parties and landowners have been notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will also be addressed through the recovery process and through the section 7 jeopardy standard.

#### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered

Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, Commonwealth, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the Commonwealth, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No critical habitat is being proposed for *Ottoschulzia rhodoxylon*, as discussed above. Federal involvement is not expected where the species is known to occur.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. In addition, for endangered plants the 1988 amendments (Pub. L. 100-478) to the Act prohibit the malicious damage or destruction on Federal lands, and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any State (Commonwealth) law or regulation, including State (Commonwealth) criminal trespass law. Certain

exceptions can apply to agents of the Service and Commonwealth conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits for *Ottoschulzia rhodoxylon* will ever be sought or issued, since the species is not known to be in cultivation and is uncommon in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 3507, Arlington, Virginia 22203-3507 (703/358-2104).

#### National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the *Federal Register* on October 25, 1983 (48 FR 49244).

#### References Cited

- Ayensu, E.S., and R.A. Defilippis. 1978. Endangered and threatened plants of the United States. Smithsonian Institution and World Wildlife Fund, Washington, DC. xv + 403 pp.
- Liogier, H.A., and L.F. Martorell. 1982. Flora of Puerto Rico and adjacent islands: a systematic synopsis. University of Puerto Rico, Rio Piedras, Puerto Rico. 342 pp.
- Little, E.L., Jr., R.O. Woodbury, and F.H. Wadsworth. 1974. Trees of Puerto Rico and the Virgin Islands, second volume. Agriculture Handbook No. 449. U.S.D.A., Forest Service.

#### Author

The primary author of this proposed rule is Ms. Susan Silander, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622 (809/851-7297).

#### List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

#### Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations is amended, as set forth below:



**PART 17—[AMENDED]**

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, Stat. 3500, unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under

Icacinaceae, to the List of Endangered and Threatened Plants:

**§ 17.12 Endangered and threatened plants.**

\* \* \* \* \*

(h) \* \* \*

Species		Common name	Historic range	Status	When listed	Critical habitat	Special rules
Scientific name							
Icacinaceae—Icacina Family: <i>Ottoschulzia rho-</i>		Palo de rosa.....	U.S.A. (PR), Dominican Republic.....	E.....	385.....	NA.....	NA
<i>doxylon.</i>							

Dated: March 21, 1990.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90-8241 Filed 4-9-90; 8:45 am]

BILLING CODE 4310-55-M